BOOK REVIEWS

JUSTICE AND THE POOR. By Reginald H. Smith, of the Boston Bar. New York, The Carnegie Foundation for the Advancement of Teaching, 1919; pp. xiv, 271.

Unless lawyers are an unimaginative and hopelessly backward-looking social group, as some unkind critics have asserted, they will find this book one of the most suggestive and stimulating contributions to legal literature that has appeared in recent years. It touches in a broad way the whole field of the relation of legal institutions and the legal profession to the major problems of society. It demonstrates in a most striking manner how those who plan and administer the machinery of the law must awake to the fact that they form the front line of civilization's defense against anarchy. And it presents in most interesting detail the results of a generation of effort to make legal agencies and institutions adequate to the performance of the new duties imposed by the changing social order. No lawyer can read the book without feeling anew the far-reaching responsibilities which rest upon the bar, and at the same time he will derive from it the most instructive suggestions as to the exact nature of the difficulties to be met and the degree of success which has been reached and which may be expected from various reforms and ameliorating devices.

A brief synopsis of the main features of the book will exhibit the very practical character of its subject matter and its method. And while it deals, as its title indicates, primarily with the problem of justice for the poor, it throws a flood of light on the whole subject of judicial administration.

Three defects in our judicial system are deemed of controlling importance. These are (1) Delay, (2) Court Costs and Fees, and (3) Expense of Counsel.

Delay is a by-product of cumbersome, complex and technical procedure, both in and out of court, and is a problem as broad as the law. Rich and poor alike suffer from it, but the poor are less able to carry the burden. To them it often makes litigation impossibe, while the well-to-do find it only a variable deterrent, sometimes operative and sometimes not. Delay tends to increase as means are provided for the careful preparation and trial of issues. Thoroughness takes time and necessarily involves delay, and the question becomes one of expediency,—where is the point at which thoroughness ceases to have advantages commensurate with the delay which it entails? The answer depends on the relative importance to the litigant of speed as against correctness of decision. To the poor speed is relatively much more necessary, for delay is often equivalent to a total denial of justice. Hence a poor man's court should be summary in its methods. To meet this demand for speed, even at the expense of care and thoroughness, there came into use the Small Claims Court, the Conciliation Court, the Arbitration Tribunal and the Administrative Commission, in all of which quick action is an important feature, and in this respect they have been reasonably suc-

cessful. It is quite clear, however, from the facts which the author presents, that the real solution for delay is not in separate tribunals for the poor, but in the reform of legal procedure in general. Certain classes of actions, such as wage claims, rent, store debts, and domestic difficulties, lend themselves with some readiness to summary treatment, but this is equally true whether the litigants are poor or rich. Every court ought to have a procedural machinery adapted to the divergent characteristics of the controversies brought before it, instead of having all classes of litigation slowed down to the speed of the slowest.

The second common defect, Court Costs and Fees, is one which applies with peculiar emphasis to the poor. Well-to-do litigants find no serious difficulty in meeting this expense, which is in fact relatively small in this country as compared with other countries where the common law is administered. It is comparatively easy to provide for remission of these costs in case of poor persons. If, however, we wish to avoid setting up class rules of procedure based on class distinctions, which would be likely to prove a political mistake, it is entirely possible to eliminate all costs and fees, making justice as free to all as police protection and sanitation, thus carrying the entire cost of the courts as an item of public expense.

The third defect is the real crux of the problem of justice for the poor,—Expense of Counsel. And it is this problem—the problem of how the poor man is to enjoy equality before the law in having his rights properly protected by counsel—that forms the main subject of study in the book.

Three methods have been suggested for solving the problem of employing counsel. The first is to prohibit the use of counsel; the second is to so conduct the case as to make the employment of counsel unnecessary; and the third is to supply an attorney or his equivalent to aid the poor person.

The prohibition of the use of counsel is the method adopted in some Small Claims Courts and some Courts of Conciliation. The author demonstrates the undoubted advantages of such a system when used in this way. The unique Small Claims Court of Kansas is described and compared with similar courts which have been established in Portland, Cleveland and Chicago, and the experience of these typical courts show that if well trained judges are provided, and if the amount in controversy is not allowed to reach a point where rights are felt to be too important to be jeopardized by informality in procedure and the lack of partisan legal advice, such courts "are capable of reducing by one quarter the exising denial of justice," because of their ability to handle nearly all wage claims and miscellaneous small debts.

Certain improvements, such as power to order a judgment paid by instalments, authority to exercise an informal bankruptcy jurisdiction by bringing in and ratably protecting all the creditors of a small debtor, and some sort of auxiliary assistance rendered to the litigants by the clerk of the court or similar officer, would, in the author's opinion, render these Small Claims Courts very effective.

As for Courts of Conciliation, European experience is shown to be all in their favor, but they have not made much headway in this country. The author fears that the proper compound of common sense and psychology is

not indigenous here, and that only through a slow process of gradual development will the idea become so buttressed by custom that it will become a vital element in the American procedural system.

Rendering the use of counsel unnecessary is the second method employed for solving the problem of the cost of counsel. The most striking instance of this method is in the Domestic Relations Courts, where a well organized and technically competent probation staff, under the control of the court, performs all the functions which a paid attorney might be expected to perform, or where these matters are looked after by an assistant district attorney, or by some other public officer. There is a marked tendency to place criminal processes within the jurisdiction of such courts, in order to secure more prompt and efficient administration, and this will tend to emphasize the interest which the state has in domestic relations and will hasten the movement to provide adequate public facilities for protecting the rights of all parties involved.

Other instances of the invention of judicial machinery which will enable poor persons to safely do without the services of an attorney, are found in the numerous administrative tribunals whose creation is an outstanding feature of present-day judicial development. The most familiar of these are the Industrial Accident Commissions. They substitute notices and claims, on standardized forms, for the writs and declarations of the common law; service is had by mail; there are no questions of venue or jurisdiction; instead of trial lists and calendars there are hearings set for definite hours by notices sent out by the commission; the case can be investigated by the staff maintained by the commission; and at the trial rules of evidence—those absurd anachronisms by which we turn a common law trial into a professional contest of wits—are discarded, and the commissioners take the responsibility of protecting the employee in presenting his case. In some jurisdictions the commission takes an appeal for the employee if the latter desires it.

Public Service Commissions are somewhat different in their origin, for they do not exemplify a revolt against intolerable procedure but were established to occupy a new field. They do, however, undertake many of the duties which Industrial Accident Boards perform in reducing the necessity for the employment of counsel. The thirtieth report of the Interstate Commerce Commission, for 1916, shows that the Commission answered about 50,000 inquiries in regard to legal rights during that year.

It is evident from this summary, however, that these methods of dispensing with the aid of counsel are of limited availability, and are really means for reducing rather than eliminating the need for an attorney. In simple cases before these commissions and in such courts as the Domestic Relations Courts, no attorney is necessary, but where difficult questions of law or complicated matters of fact are involved some expert aid in the nature of counsel's services seems necessary, and this is sought to be supplied through the judicial body which has jurisdiction of the controversy. These tribunals therefore represent in part the method of so conducting the case that it is feasible to dispense with counsel, and in part another method, namely, supplying the poor person with an attorney, without expense. We are there-

fore brought to a consideration of the third and probably the most important solution of the problem of providing justice for the poor.

Supplying an attorney to give legal aid and advice is a proceeding known to the common law in the form of assignment of counsel. The author argues that since the assignment plan has proved a dismal failure in criminal cases (other than murder) and has long been in disuse in civil cases, there is an inherent weakness in it, and this weakness, he thinks, is the economic fallacy of replying upon the unpaid services of willing members of a hard-working and not over-paid profession. This seems to be an adequate explanation, which at the same time suggests the true solution of the difficulty.

Where counsel is necessary to secure full justice to the poor, his aid can be adequately supplied only if he is paid for his services. There are two methods of providing compensation,—by private charitable organizations and by public bureaus supported by taxation.

The Public Defender is the most conspicuous example of counsel employed by the state to safeguad the rights of indigent parties. Los Angeles, California, led the way in this movement in 1913; Portland, Oregon, and Omaha, Nebraska, followed in 1915; and Columbus, Ohio, established such an office in 1916. The advantages over assigned counsel are great. The Public Defender becomes an expert in his line, and serves his clients much better than attorneys chosen at random; by reason of his skill and experience he is able to save the state much time and consequently much expense in the trial of cases; the independent position which he occupies results in raising the tone of criminal trials; technical objections are reduced to a minimum; and the undesirable creature known as the "jail lawyer" tends to disappear.

But there is no reason for limiting legal aid merely to defendants in criminal cases. The problem is much broader. Society has a duty to see to it that justice is secured to all who need it, and to meet this comprehensive duty Legal Aid Societies have come into the field. The first one was organized in New York in 1876, and tweny-four years later only two others, in Chicago and Jersey City, had been formed. During the next ten years eleven more came into existence, and by 1918 there were forty-one such Societies in American cities.

The history of the development of these societies is full of interest. Some are supported in part by public funds, but most of them are wholly dependent upon private donations. They have constantly broadened the field of their activities. All but three of them will now handle bankruptcy cases and entertain disbarment proceedings against attorneys. While most of them still refuse to defend criminal cases or prosecute divorce cases, the author thinks this is a mistaken policy which will rapidly be abandoned. The majority refuse personal injury cases unless the claims are for trifling amounts, but this is also criticized as narrow and tending to promote the contingent fee system. Evidently the Legal Aid Societies should extend their activities to cover the whole field if they are to be effective agencies in bringing justice to the poor.

As to the respective merits of the publicly and privately supported legal aid agencies, the author is clearly of opinion that the former is the better

type, which will ultimately prevail. There seems to be no good reason for doubting his conclusion. As Elihu Root says in the foreword of the book, "No one doubts that it is the proper function of the government to secure justice. In a broad sense that is the chief thing for which government is organized. Nor can anyone question that the highest obligation of government is to secure justice for those who, because they are poor and weak and friendless, find it hard to maintain their own rights." The author maintains that "Legal aid work is part and parcel of the administration of justice." Probably nothing would be more effective in allaying anarchistic tendencies among the poor and ignorant than well conducted and efficient legal aid bureaus maintained by the government itself. The great drawback to such bureaus is that the personnel is likely to suffer from political influences. But this is equally true of all departments in a democratic government, and can be surmounted here as well as elsewhere.

Legal aid is shown to be a very cheap form of charity. In 1916 thirty organizations took care of over 100,000 cases at an average net cost of about $1.50 per case. In no way could the state derive a greater ultimate advantage from a comparatively small expenditure.

The greatest present weakness of the Legal Aid Societies is lack of funds, which would be remedied if taken over by the state, and lack of centralized organization. Considerable space is devoted to the relation of the Legal Aid Society to the law, to the community, to organized charity and to the bar. From whatever side they are examined they hold out promise of great usefulness if properly developed and provided with capable leadership. This leadership must come from the bar.

The book is written in clear and forcible language, and is as entertaining as it is instructive; the author never allows himself to wander into vague generalities, but marshals his concrete data with great skill; his historical matter is sufficient to serve his purpose, but his chief concern is the effectiveness, not the origin, of the methods he discusses. He has also made his book an immensely valuable bibliography of the subject by full citations of all the more important books, articles, addresses and reports bearing on the matters under discussion, and has added a very well prepared index.

The author and the Carnegie Foundation for the Advancement of Teaching have done a great service to America and to the American bar by preparing and publishing this illuminating treatise on justice for the poor.

E. R. SUNDERLAND.

EXPERIMENTS IN INTERNATIONAL ADMINISTRATION, by Francis Bowes Sayre, S. J. D. New York, Harper and Brothers, 1919; pp. xvi, 201.

Mr. Sayre's book was completed between the signing of the armistice and the meeting of the Peace Conference. If the author were writing today, in the light of all that has happened during the past twelvemonth, it is probable that his optimism about cooperative internationalism and the League of Nations triumphant would be much more restrained. Unlike so much that has been written of late, however, the book's permanent value is in no way im-